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March 29, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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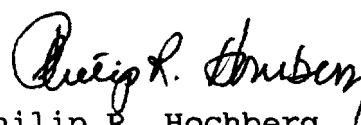
Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Dear Ms. Searcy:

On behalf of my client, the National Hockey League, I hereby submit an original and nine (9) copies of Comments of the National Hockey League in PP Docket No. 93-21.

Should you have any questions concerning the above, please communicate directly with the undersigned.

Very truly yours,



Philip R. Hochberg
Counsel for
NATIONAL HOCKEY LEAGUE

Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
FCC 93-97

In the Matter of

Implementation of Section 26 of the
Cable Consumer Protection
and Competition Act of 1992

Inquiry into Sports Programming
Migration

PP Docket No. 93-21

**COMMENTS OF
THE NATIONAL HOCKEY LEAGUE**

COMES NOW the National Hockey League (hereinafter sometimes "NHL" or "League") and files these Comments in response to the Commission's Notice of Inquiry, Plans and Policy Docket No. 93-21 (hereinafter "the Notice"), dealing with "Sports Migration" issues pursuant to Section 26 of the Cable Television Consumer Protection and Competition Act of 1992 (hereinafter "the Act").¹

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¹ Pub. Law 102-385, 102 Stat. 1460 (1992).

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Summary

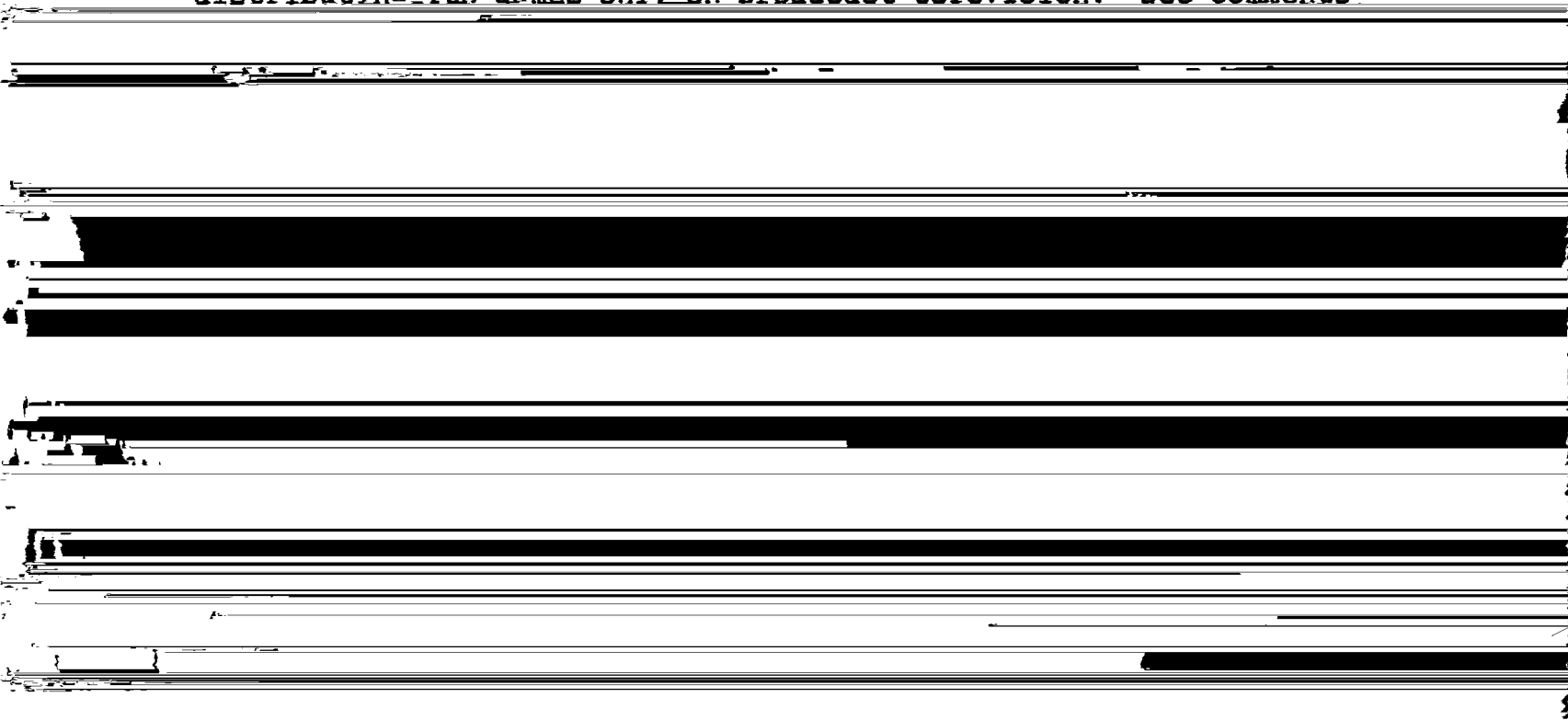
The NHL accepts the Commission's definition of cable migration, the starting point for the Commission's inquiry and the Commission's chosen means to measure such migration, but respectfully suggests that the Commission keep in mind potential shortcomings of its methodology. See Comments in Response to Paragraphs 6 and 8. Under the Commission's definition, a portion of NHL hockey games has migrated to cable television.

Cable exhibition of NHL hockey, however, has not taken the place of broadcast exhibition. To the extent that broadcast exhibition has diminished, it has been largely because of decisions by the broadcasters themselves.

The NHL has attempted and will continue to attempt to garner network interest in exhibiting NHL hockey games. Until it succeeds in doing so, cable distribution is the only means by which the League can nationally distribute its games. See Comments in Response to Paragraphs 9, 17, 24, 25 and 30.

Throughout the period on which the Commission is focusing, NHL games have been distributed nationally only on cable television. See Comments in Response to Paragraph 17; Appendix 1. The League's current agreement with ESPN permits that carrier to originate 25 to 27 games in each season from 1992-93 through 1996-97. See Comments in Response to Paragraphs 13 and 14.

Local trends vary. In some cases cable distribution has grown while broadcast distribution has remained relatively constant. In other cases, cable distribution has grown and broadcast distribution has diminished or disappeared altogether. At least one team distributed some of its games on cable television in only one season, and subsequently returned to its practice of distributing its games only on broadcast television. See Comments



Introduction

The National Hockey League is an unincorporated association not for profit, consisting of 24 Member Clubs. Sixteen of these Clubs are based in the United States,² and eight are based in Canada.³ The League is organized principally (i) to promote professional hockey as one of the national games of the United States and Canada and (ii) to promote fan support for professional hockey in the United States and Canada.

As with each of the other major sports leagues in the United States, the League's 24 Member Clubs provide, in essence, a single product — professional NHL hockey games. In selling that product in the television marketplace throughout the country, the League competes not only with other sports programming, but also with all other forms of entertainment programming. In recent years, the television marketplace has become increasingly competitive, due in large part to its fragmentation. This competition affects not only advertiser interest in programming, but also the sale of programming to (and purchase of programming by) telecasters. In considering any issues related to sports

² These teams are located in the following communities: Boston, MA; Buffalo, NY; Chicago, IL; Detroit, MI; Hartford, CT; Los Angeles, CA; Minneapolis, MN; East Rutherford, NJ; Uniondale, NY; New York, NY; Philadelphia, PA; Pittsburgh, PA; St. Louis, MO; San Jose, CA; Tampa Bay, FL; and Washington, DC.

³ These Comments provide no analysis or information for the Canadian teams or their broadcast policies or contracts. The Canadian teams play in Calgary, Edmonton, Montreal, Ottawa, Quebec, Toronto, Vancouver and Winnipeg.

programming. it is necessary to take into account this overall

of local cable as an outlet has generally resulted in an overall increase in the number of games exhibited.

* * * * *

Set forth below are the NHL's responses to the Commission's specific requests for comment.⁴

Comments in Response to Paragraph 6

The NHL has no objection to the Commission's use of 1980 as the starting point for its inquiry. The NHL would note, however, that the hockey season commences in September and the final Stanley Cup game is generally in May or June. To exclude data that is beyond the scope of the inquiry, the NHL will provide data beginning with the 1980-81 season.

The NHL also notes that certain information requested by the Commission was unavailable as of the date of these comments.⁵ The NHL submits, however, that the absence of such information will

⁴ The NHL notes that many of the Commission's requests for comment are not addressed to the NHL or do not ask the NHL to provide information. For these and other reasons, the NHL does not respond to every request. The NHL's responses are organized in the same way that the Notice is organized, and for each response the NHL notes the paragraph and request to which it corresponds.

⁵ For example, data from certain teams were incomplete or unavailable, and ratings information was unavailable. In addition, because data were not available at a level of specificity sufficient to determine the overlap between League and team telecasts, it was impossible to calculate the number of games not telecast.

not materially affect the conclusions that the Commission may draw from the available data.

Comments in Response to Paragraph 7

With respect to the Commission's inquiry regarding the classification of superstations, the NHL believes that superstations are properly classified as local broadcast stations within their respective local market areas, but should be considered national stations outside of those areas. The data that the NHL has provided in the Appendices is organized accordingly.

such is not the case, the number of people who actually see the game may not significantly diminish if those who could not receive the cablecast would not have watched the game on broadcast television.

Nevertheless, the NHL believes that measuring exhibition data is the only available practicable method for the Commission to employ. The NHL respectfully suggests that the Commission bear in mind the potential flaws of this method when considering the data it receives.

Comments in Response to Paragraph 9

With respect to the Commission's assumption that sports leagues seek to maximize their overall net revenues, the NHL agrees that, like any business (including television), a league and its teams will generally seek to achieve the greatest possible net revenue from a variety of sources. However, in the case of the NHL, achieving greater exposure is a primary goal at this juncture. These objectives require a delicate balancing of many varied business considerations to ensure a successful long term approach, which will inure to the benefit of both the league and its fans.

With respect to the Commission's public policy objective — to "maximize the value to viewers of the menu of sports events telecast, subject to relevant constraints" — the NHL notes that those constraints must include a recognition that broadcasting and

cablecasting policies are often dictated by the broadcasters and cablecasters themselves.

Comments in Response to Paragraph 11

From the 1980-81 season through the 1991-92 season, the NHL regular season consisted of 80 games. Each team played 40 home games and 40 away games. In the 1992-93 season, the number of regular season games increased to 84. Each team will play 41 home games, 41 away games and two games in a non-NHL city.

From the 1980-81 season until the 1990-91 season, there were 14 United States NHL teams and seven Canadian teams; in the

team played the fifteenth-ranked team, etc., in best of five series.

The eight preliminary round winners, again ranked number one through number eight based on regular season records, played in the quarter finals, with the first-ranked team playing the eighth-ranked team, the second-ranked team playing the seventh-ranked team, etc., in best of seven series.

The four quarter final winners, again ranked number one through number four based on regular season records, played in the semi-finals, with the first-ranked team playing the fourth-ranked team and the second-ranked team playing the third-ranked team in best of seven series.

The two winners of those series then played against each other for the Stanley Cup.

From 1981-82 through the present, the first four teams in each division earned playoff berths. In each division, the first-place team played against the fourth-place team and the second-place team played against the third-place team in a best of five series called the Division Semi-Finals. The two winners of the Division Semi-Finals in each division then played in the Division Finals, a best of seven series. The two winners in each conference then played in a best of seven Conference Final series. The two conference winners then played against each other for the Stanley Cup.

From the 1986-87 season through the present, the Division Semi-Final has been a best of seven series.

The information requested in paragraph 11 concerning annual telecasts, to the extent that it was available, is attached at Appendices 1, 2, 3 and 4.⁶ Appendix 1 contains League data on national telecasting of games. Appendix 2 contains a team-by-team summary of telecasts from the 1980-81 through 1992-93 seasons. Appendix 3 lists annual team-by-team regular season local telecast information and, where applicable, information concerning superstation telecasts. Appendix 4 lists annual team-by-team

telecasts or other factors. The team or league decides, likewise based on a number of factors, how many games it wants transmitted. The intersection of these decisions determines whether certain games are not telecast, and it is difficult, if not impossible, to determine the reason any particular game or games were not telecast.

Comments in Response to Paragraph 13⁷

On September 2, 1992, the League and ESPN agreed to two national television contracts covering five seasons, effective with the 1992-93 season. The agreements provide, among other things, that ESPN will telecast 25 to 27 games per season on its primary channel, plus an agreed upon number of specially selected games

the team may telecast beyond that radius as necessary to reach 2,300,000 total households (the "Sphere of Influence").

By reason of course of conduct, and by reason of a policy that has been adhered to for over 35 years, no team may broadcast into another team's home territory when that other team is playing at home. The courts and Congress have recognized for decades that this is a legitimate method of protecting attendance.⁸ In addition, NHL rules provide that the home territory of the two teams being nationally cablecast shall be blacked out on that national cablecast, although the competing teams may distribute the game in their respective markets.

⁸ See United States v. National Football League, 116 F. Supp. 319 (E.D. Pa. 1953). See also Sports Broadcasting Act, 15 U.S.C. § 1292.

Comments in Response to Paragraph 14

As discussed above, the League's contract with ESPN covers the 1992-93 through 1996-97 seasons. The number of games to be exhibited is consistent through the seasons.

Comments in Response to Paragraphs 17

With respect to the request for information concerning the Minnesota North Stars, the Chicago Blackhawks and the Pittsburgh Penguins, the NHL submits that none of the pay packages sold by these teams constituted migration.

Minnesota North Stars: In the 1990-1991 season, the Minnesota North Stars advanced to the Final Round of the Stanley Cup Playoffs. Prior to that season, the North Stars had made the playoffs in the 1989-1990, 1988-1989 and 1985-1986 seasons, but had never advanced beyond the first round. In each of those years, all away playoff games were shown locally on broadcast television, and home games were not telecast locally.

The North Stars' local broadcast station again carried all away playoff games in the 1990-1991 season. Thus, there was no change in distribution from prior seasons. In addition, the North Stars offered to sell to both their local cable carrier and their local broadcast station the rights to telecast their 1990-1991 home playoff games, but neither carrier chose to purchase those rights.

The North Stars therefore packaged and distributed their home playoff games for pay television.⁹

These pay telecasts thus supplemented existing over-the-air telecasts, rather than replacing them, and were offered only

Pittsburgh Penguins: In the 1992-93 season, the Penguins, for the first time, placed six home regular season games on pay television. Home games, except in very unusual circumstances, are not telecast. These pay television transmissions therefore have supplemented, rather than replaced, telecasts and do not represent migration.

With respect to the request for information concerning the NHL's absence from network television, the NHL notes that such absence was and is not at the League's volition. Network officials offered various reasons for canceling their coverage of hockey in 1976; primarily, poor ratings due in some part to a drop in

Comments in Response to Paragraph 24

With respect to the issue of retransmission consent, the NHL respectfully directs the Commission to its Comments submitted jointly with the National Basketball Association in response to the Commission's Notice of Proposed Rule Making, Mass Media Docket No. 92-959.

The NHL would also note that in an era where the national networks have been unwilling to carry NHL packages and where local stations often prefer films or other entertainment programming to hockey, the NHL and its teams have had no choice but to use the new technologies that make alternative means of distribution available. Indeed, the NHL has been in the forefront of new technology uses, including cable, pay cable, pay-per-view, home satellite dish delivery and direct broadcast satellite. The use of those technologies has permitted the NHL to distribute games that would likely not otherwise have been available to consumers. The NHL's goal is to increase its exposure and to expand its fan base, and the League recognizes that the best way to do so is through broadcast network arrangements.

Comments in Response to Paragraph 25

At the present time, broadcast and cable exhibition is important to the NHL, although the magnitude of revenues derived from such exhibition on a League-wide basis is less than in other

sports. In recent years, broadcast revenues, both national and local, have accounted for less than six percent of NHL revenues. An additional 18% of revenues come from non-broadcast media sources such as cable.

Notwithstanding the limited national television exposure and reduced broadcast exposure throughout the country — generally as a result of decisions by broadcasters — the NHL has over the past decade sold a greater proportion of its seating capacity than any other professional sport. Television exposure as such is therefore not necessarily responsible for attendance.

But the success of leagues in this era is not measured by attendance alone. Other revenues, such as national network, licensing and ancillary sources, all contribute to the success of sports leagues.

Comments in Response to Paragraph 26

The role of superstations for the NHL has changed over the period on which the Commission is focusing. Through the mid-1980s, games of the New York Rangers, New York Islanders and New Jersey Devils were carried on WOR-TV. By the end of the decade, however, the station had stopped carrying those games.

Currently, WSBK-TV carries one home game and 40 away games of the Boston Bruins, and KTLA-TV carries ten away games of the Los Angeles Kings. Given the relatively limited distribution of WSBK-TV and KTLA-TV, the NHL does not believe that superstations

have or have had a major impact on the exhibition of NHL games. The League does share the view, however, that significant superstition exhibition, such as that experienced by Major League Baseball or the National Basketball Association, can adversely affect national contracts and national broadcasts. In such cases, the teams are forced to compete with themselves, with no control and minimal revenue from compulsory license fees.

Comments in Response to Paragraph 27

With respect to the Commission's inquiry concerning the effects of the Sports Broadcasting Act, the NHL notes that prior to the passage of that legislation, sports interests other than the National Football League had never been precluded from pooling their television rights for sale. The League therefore respectfully submits that passage of the legislation merely gave express Congressional approval to the already lawful marketing plans of the various sports organizations. The Act has in recent years been a relative non-factor for the League, but its existence permits the League to market a national package for network television without facing possible legal obstacles.

Comments in Response to Paragraph 30

The NHL believes that non-broadcast media have made games available for telecast that would not otherwise have been available. As discussed above (at 5-6 and 16), access to such alternative media has enabled the NHL to distribute its games

nationally. Without such access, no NHL games would be nationally distributed.

On the local level, hockey is still largely available on broadcast media. In most instances, cable distribution has supplemented, rather than taken the place of, over-the-air telecasts.

Because broadcasters' interest in the NHL has changed over the years, the NHL does not believe that it is useful to compare the public benefit of the current mix of telecast types with the mix in 1980 or earlier. In response to the Commission's inquiry in this regard, the NHL therefore submits that the public is better served by the current mix of telecast types than it would be if the use of cable and other non-broadcast media were diminished.

Conclusion

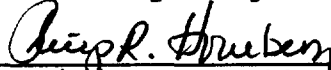
To the extent that it has occurred, the migration of NHL games to cable television has occurred out of necessity. Where broadcasters' interest in NHL hockey games has declined, cable distribution has enabled the NHL and its teams to exhibit hockey games that would not otherwise have been telecast. Thus, in the current climate of broadcaster reluctance to telecast hockey games, cable distribution has served the interests of the League, its teams and the members of the viewing public who wish to see hockey games on television.

Dated: March 29, 1993

Respectfully submitted,

National Hockey League

By


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NHL NATIONAL TELECASTS

SEASON AND CARRIER	REGULAR SEASON	PLAYOFFS	ALL-STAR GAME	TOTAL TELECASTS
1980-81	Data Unavailable	Data Unavailable	Data Unavailable	Data Unavailable
1981-82	Data Unavailable	Data Unavailable	Data Unavailable	Data Unavailable
1982-83	Data Unavailable	Data Unavailable	Data Unavailable	Data Unavailable
1983-84 (USA)	33	22	1	56
1984-85 (USA)	33	25	1	59
1985-86 (ESPN)	33	34	1	68
1986-87 (ESPN)	34	37	0	71
1987-88 (ESPN)	34	35	0	69
1988-89 (Sports Channel)	150 ¹	Data Unavailable	0	Data Unavailable

